IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10550 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANUPSINGH MERUBHA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10550 of 1999

MR MUKESH H RATHOD for Petitioner No. 1

MR SAMIR J DAVE for Respondent No. 1-5

MR UM SHASTRI for Respondent No. 1,2

MR MUKESH A PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/06/2004

ORAL JUDGEMENT

The petitioner has challenged the order dated 18th March 1999 whereby, the Ministry of Labour, Government of India, has refused to make Reference on the

ground that the dispute has been raised after a period of ten years without giving justifiable reasons for delay.

1.1. The petitioner was engaged as a casual labour under PWI (C) Western, Railway, Dwarka Rajkot Division, with effect from 11th March, 1980. After serving for several years in different departments, his service was terminated without following any procedure. Ultimately, he made complaint on 14th February, 1998 before the Conciliation Officer i.e. Assistant Labour Commissioner (Central) Adipur (Kutch). Since the conciliation proceedings failed, failure report was submitted. The competent authority was requested to make Reference under Section 10 of the Industrial Disputes Act. However, the Ministry of Labour, Government of India vide communication dated 18th March, 1999 addressed to the President, Saurashtra Employees' Union and other authorities intimated that in reference to the failure of conciliation report dated 16th July, 1998 from the Assistant Labour Commissioner, Baroda received by the Ministry had prima facie, considered the dispute not fit, for the reason that the dispute was raised after a period of ten years without giving justifiable reasons for long delay.

1.2. It is this order which is now sought to be challenged in this petition under Article 227 of the Constitution of India.

2. Having heard Mr. M.H. Rathod, learned advocate for the petitioners and Mr. Samir Dave, learned A.G.P. for respondents nos. 1 to 5 and Mr. U.M. Shastri learned advocate for respondents nos. 1 and 2, it is clear that the request for the reference is not acceded to, solely on the ground that the dispute has been raised at a belated stage and unjustifiable reasons have been advanced for the delay.

2.1. It is by now a well settled proposition of law that the request for making reference cannot be turned down solely on the ground of delay. The Apex Court in the case of Ajaib Singh v/s. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. reported in AIR 1999 S.C. p. 1351 has held that provisions of Article 137 of the Schedule to the Limitation Act are not applicable to the Industrial Disputes Act and relief cannot be denied to workman merely on the ground of delay. Similar view has been taken by the Apex Court in the case of Sapan Kumar Pandit v/s. U.P. State Electricity Board reported in 2001 III CLR p.16. This Court has also followed the said judgment and taken the

same view in the judgment rendered in the case of Mazdoor Kalyan Sangh v/s. Government of India in Special Civil Application No. 2001 of 1994 dated 16th April, 2004.

3. In view thereof, and in view of the decisions which have been referred to above, this petition deserves to be allowed. The impugned order dated 18th March, 1999 is quashed and set aside. The Competent Officer is directed to reconsider the demand and make the reference. The petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/